

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017,
 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015,
 671/2014, 672/2014, 673/2014, 674/2014

CENTRAL ADMINISTRATIVE TRIBUNAL
 MUMBAI BENCH, MUMBAI.

- 01) Original Application No.573/2014
- 02) Original Application No.190/2018
- 03) Original Application No.171/2017
- 04) Original Application No.184/2017
- 05) Original Application No.185/2017
- 06) Original Application No.263/2017
- 07) Original Application No.265/2017
- 08) Original Application No.266/2017
- 09) Original Application No.296/2017
- 10) Original Application No.297/2017
- 11) Original Application No.450/2017
- 12) Original Application No.495/2017
- 13) Original Application No.375/2015
- 14) Original Application No.515/2015
- 15) Original Application No.676/2015
- 16) Original Application No.671/2014
- 17) Original Application No.672/2014
- 18) Original Application No.673/2014
- 19) Original Application No.674/2014

Wednesday, this the 18th day of December 2019

CORAM:- R.VIJAYKUMAR, MEMBER (A)
 RAVINDER KAUR, MEMBER (J)

01) OA No.573/2014

N. K. Ghanghave, S/o
 Shri Kashinath Ghanghave,
 Aged about 63 years,
 R/o Khadgaon Road,
 Opp. Sushila Devi College,
 Sambhaji Nagar,
 Latur-413 531.
 (Office Address:

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

Worked as Sub-Postmaster
Under SPO,
Osmanabad Division).

...Applicant

Versus

1. The Union of India,
the Secretary,
Government of India,
Ministry of Communication,
Department of Posts,
Dak-Bhavan,
New Delhi-110001.
2. The Secretary,
Government of India,
Ministry of Personnel,
Public Grievances and Pensions,
Department of Personnel & Training,
New Delhi-110 001.
3. The Chief Post Master General,
Maharashtra Circle,
Mumbai 400 001.
4. The Assistant Director of Postal Services,
Aurangabad Region,
Aurangabad-431002.
5. The Senior Superintendent of
Post Offices,
Osmanabad Division,
Osmanabad-413 501.

...Respondents

02) OA No.266/2017

M. B. Netawane,
S/o Babu Rao Natawane,
Aged about 63,
R/o-Priti Sugandh Housing Society No.4
Dindori Road,
Meri, Nashik-422 004.
(Office Address: Worked as Assistant
Postmaster at Nashik HO).

...Applicant

Versus

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

1. The Union of India
through the Secretary,
Government of India,
Ministry of Communication,
Department of Posts,
Dak-Bhavan, New Delhi-110001.
2. The Chief Post Master General,
Maharashtra Circle,
GPO Premises,
Mumbai 400 001.
3. The Post Master General,
Aurangabad Region,
Aurangabad-431002.
4. The Senior Superintendent of
Post Offices,
Nashik Division,
Nashik-422 011.

... Respondents

03) OA No. 672/2014

Shri Anant S/o Ambadasrao Hiswankar
Age: 59 years, Occ. Service,
O/o. Postal Assistant,
Head Post Office,
Jalna (Maharashtra) 431201.
R/o. Abhyuday, Plot No.9,
Choudhary Nagar,
Mantha Road, Jalna 431 203.

... Applicant

versus

UNION OF INDIA
The Department of Posts,
Through:

1. The Secretary,
Government of India,
Ministry of Communication,
Department of Posts,
Dak-Bhavan, New Delhi-110001.
2. The Chief Post Master General,
Maharashtra Circle,
GPO Premises,
Mumbai 400 001.

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017,
 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015,
 671/2014, 672/2014, 673/2014, 674/2014

3. The Post Master General,
 Aurangabad Region,
 Aurangabad-431002.
4. The Senior Superintendent of
 Post Offices,
 Aurangabad Division,
 Aurangabad-431001. ... Respondents

04) OA No. 673/2014

Shri Shridhar S/o Muralidhar Deshmukh
 Age: ____ years, Occ. Service,
 O/o Sub-Post Master,
 Sub-Post Office Jalna-Mondha,
 Tq. Jalna, Dist. Jalna (Maharashtra)
 431203.
 R/o.H.No.24, Mahur Niwas,
 Shakuntal Nagar,
 Mantha Road, Jalna-431203. ... Applicant

Versus

UNION OF INDIA
 The Department of Posts,
 Through:

1. The Secretary,
 Government of India,
 Ministry of Communication,
 Department of Posts,
 Dak-Bhavan, New Delhi-110001.
2. The Chief Post Master General,
 Maharashtra Circle,
 GPO Premises,
 Mumbai 400 001.
3. The Post Master General,
 Aurangabad Region,
 Aurangabad-431002.
4. The Senior Superintendent of
 Post Offices,
 Aurangabad Division,
 Aurangabad-431001. ... Respondents

05) OA No. 515/2015

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017,
266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015,
671/2014, 672/2014, 673/2014, 674/2014

1. NAGESH LAXMAN KELKAR
Age 61 Years,
Retired as Sub Post Master Navelim,
Residing at 43/B, Shri Kunj,
Rumdamol Davorlim, P.O. Navelim
(Goa) 403707.
2. ANANT POKA SHETKAR
Age 61 years
retired as OA DO Mapusa,
Residing at 1/136, DW-1,
(Bhumika), Near Datta Pasad
Colony, Cunchelim, Mapusa
Goa 403 507.
3. ANANDA JAIRAM NAIK TUYENKAR
Age 63 years,
Retired as Sub Post Master,
Mandre SO, R.at H.No. 20,
Gaonkar Wada, At Post Tuyem,
Pernem Goa-403512.
4. G. A. FADTE
Age 65 years,
Retired as AOPM Margao HO,
R/at BF 1, Chrisville Co-op,
Housing Society Ltd.,
Aquem, Margaon 403601 Goa.
5. YUSUF RAZAK NAIK
Age 64 years,
Retired as Sub Post Master,
Kagal SO, R/at R.S.No.162/2,
Treemurti Colony,
Shanti Nagar, Pachgaon,
R. K. Nagar,
Kolhapur 416013.
6. VASUDEV PANDURANG NAIK
Age 64 years,
Retired as SPM,
R/at H 321 Madhala Wada,
PO Savai Verem Via Ponda,
Goa-403401.
7. SHARAD JANARDHAN WAGLE
Aged 64 years,

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017,
 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015,
 671/2014, 672/2014, 673/2014, 674/2014

Retired as Sub Post Master,
 R/at CG 17 Central Housing Society,
 Carabolim Past Carling 403 110.

8. PRAKASH KKRISHNA HALDANKAR
 Aged 63 years,
 Retired as Postal Assistant
 RR/at H No.199/1 Haldan Vada
 Khandola Marcela,
 Goa-403 107.
9. SONU RAMA SHETKAR
 Age 61 years,
 retired as Postal Assistant,
 R/at 102/A Siddiqui Mohd. Chawl,
 Room No.6 Old Prabhadevi Road,
 Prabhadevi, Mumbai-400 025.
10. PUNDALIK ARUN SATOSKAR
 Age 62 years
 Retired as Postal Assistant
 R/at Rammnar,
 Calvale Goa 403 513.
11. Subodh Mukund Dhargalkar
 Age 63 years,
 Retired as SPM Sanqqquelim
 R/at H No.61 Deul Wada Piligao,
 Bicholim 403 504.Applicants

versus

1. Union of India through
 The Secretary,
 Department of Posts Ministry of
 Communication and Information
 Technology,
 Sanchar Bhawan,
 Sansad Marg,
 At Post New Delhi Pin 110 001.
2. The Chief Postmaster General
 Maharashtra Circle,
 GPO, Mumbai 400 001.
3. The Postmaster General,
 Goa Region,
 Panaji, Goa 403 001.

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017,
 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015,
 671/2014, 672/2014, 673/2014, 674/2014

4. The Senior Superintendent of Post
 Offices Mumbai North West
 Division, Kandivali (E),
 Mumbai-400 101.

... Respondents

06) OA No. 375/2015

Shaikh Mahemud Shaikh Suleman
 Age: 60 years,
 Occ. Retired Sorting Assistant (RMS),
 O/o. Railway Mail Service, "L" Divison,
 Aurangabad, (Maharashtra) 431001.
 R/o. H.No.6/13/499, Silk Mill Colony,
 Behind Marathwada Hardware,
 Near Dhanagarwada, Aurangabad
 (Maharashtra) 431010.

... Applicant

versus

UNION OF INDIA
 The Department of Posts,
 Through:

1. The Secretary,
 Government of India,
 Ministry of Communication,
 Department of Posts,
 Dak-Bhavan, New Delhi-110001.
2. The Chief Post Master General,
 Maharashtra Circle,
 GPO Premises,
 Mumbai 400 001.
3. The Post Master General,
 Aurangabad Region,
 Aurangabad-431002.
4. The Superintendent,
 Railway Mail Service "L"
 Division, Bhusawal
 (Maharashtra) 425201.

... Respondents

07) OA No. 671/2014

Shri Namdeo S/o. Bhagwantrao Kad
 Age ____ Years, Retired as Sub-Postmaster

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

Bhokardan, O/o. Sub-Postmaster,
Sub-Post Office, Bhosardan,
Tq.Bhokardan, Dist. Jalna
(Maharashtra) 431114.
R/o. At Post. Sipora Bazar, Near
Post Office, Tq. Bhokardan, Dist.Jalna,
(Maharashtra) 431114.Applicnat

versus

UNION OF INDIA
The Department of Posts,
Through:

1. The Secretary,
Government of India,
Ministry of Communication,
Department of Posts,
Dak-Bhavan, New Delhi-110001.

2. The Chief Post Master General,
Maharashtra Circle,
GPO Premises,
Mumbai 400 001.

3. The Post Master General,
Aurangabad Region,
Aurangabad-431002.

4. The Senior Superintendent of
Post Offices,
Aurangabad Division,
Aurangabad-431001.

... Respondents.

08) OA No. 674/2014

Shri Rangnath S/o. Dhondiba Wakodkar
Age: 59 years, Occ. Service,
O/o. Postal Assistant,
Sub-Post Office Sillod,
Tq.Sillod, Dist. Aurangabad
(Maharashtra) 431112.
R/o Plot No.165, Bhagyoday
(Kasliwal) Society,
Shivaji Nagar, Aurangabad 431003.**Applicant**

versus

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

UNION OF INDIA
The Department of Posts,
Through:

1. The Secretary,
Government of India,
Ministry of Communication,
Department of Posts,
Dak-Bhavan, New Delhi-110001.
2. The Chief Post Master General
Maharashtra Circle,
GPO Premises,
Mumbai 400 001.
3. The Post Master General,
Aurangabad Region,
Aurangabad-431002.
4. The Senior Superintendent of
Post Offices,
Aurangabad Division,
Aurangabad-431001.

... Respondents

09) OA No. 676/2015

Smt. Sunita Sudhakar Deshpande,
Age 62 years, W/o. (LAte) Sudhakar
Madhukar Deshpande, (Assistant
Post Master Accounts (Retd.)),
(R/at. Seema Sagar Society, Opp.
Sukhsagar Nagar, Telephone Exchange
Pune-411 046).

...Applicant

versus

1. Union of India through
The Secretary,
Department of Posts Ministry of
Communication and IT,
New Delhi Pin 110 001.
2. The Chief Postmaster General
Maharashtra Circle,
GPO, Mumbai 01.
3. The Senior Superintendent of Post
Offices, Pune City,
(West Division),

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017,
 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015,
 671/2014, 672/2014, 673/2014, 674/2014

Pune-411 030.

... Respondents

10) OA No. 296/2017

P. K. Banger,
 S/o Shri Kachu Hari Banger,
 Aged about 57 years,
 R/o.5, Shivshakti Nagar,
 NR Sidheshwar Nagar,
 Opp Durgadevi Mandir,
 Sailani Baba Stop,
 Nashil Rd-422 101,
 District Nashik, Maharashtra
 (Office Address Working as Postal
 Assistant Meri Colony, Post Office
 Under SSPO Nashik Dn, Nashik).

... Applicant

Versus

1. Union of India
 The Secretary,
 Government of India,
 Ministry of Communication,
 Department of Posts,
 Dak-Bhavan, New Delhi-110001.
2. The Chief Post Master General,
 Maharashtra Circle,
 Mumbai 400 001.
3. The Director of Postal Services,
 Nashik Region,
 Nashik-422 001.
4. The Senior Superintendent of
 Post Offices,
 Nashik Division,
 Nashik 422011.

... Respondents

11) OA No. 297/2017

V. G. Pendharkar,
 S/o Gopinath Balaji Pendharkar
 Aged about 65 years,
 R/o H.No.11, Samrudhi Apartment,
 Chitrangan Housing Society,
 Shankar Nagar, Gaganpur Road,
 Nashik-422013.

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017,
 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015,
 671/2014, 672/2014, 673/2014, 674/2014

(Office Address) Worked as Postal
 Assistant (Supervisor) at Circle Stamp
 Depot Upnagar Nashik, under SSPO Nashik
 Dn, Nashik. ...Applicant

Versus

1. Union of India
 The Secretary,
 Government of India,
 Ministry of Communication,
 Department of Posts,
 Dak-Bhavan, New Delhi-110001.
2. The Chief Post Master General,
 Maharashtra Circle,
 Mumbai 400 001.
3. The Post Master General,
 Aurangabad Region,
 Aurangabad-431002.
4. The Senior Superintendent of
 Post Offices,
 Nashik Division,
 Nashik-422011.

...Respondents

12 OA No. 265/2017

Suresh Narayan Gurav
 S/o Shri Narayan Babu Gurav,
 Aged about 59,
 b/c OBC, R/o. H.No.B-16,
 Kohinoor Plaza,
 behind Shivaji Stadium
 Naruti Mandir Ratnagiri,
 District Ratnagiri-415639.
 (Office Address: Working as
 Postal Assistant at Ratnagiri HO,
 Postal Department). ...Applicant

Versus

1. Union of India
 The Secretary,
 Government of India,
 Ministry of Communication,
 Department of Posts,

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

Dak-Bhavan, New Delhi-110001.

2. The Chief Post Master General,
Maharashtra Circle,
Mumbai 400 001.

3. The Director of Postal Services
OMG Office, Goa Region,
Panji-402201.

4. The Senior Superintendent of
Post Offices,
Ratnagiri Division,
Ratnagiri-415612. . . Respondents

13) OA No.190/2018

M.N. Jadhav, S/o. Shri Nadaji Jadhav
Aged about 59 years, b/c-
R/o 635, Adarsh Nagar, New Link Road,
Oshiwara, Mumbai 400 102.
(Office Address: Working as ASPM
Bandra EPO (Postal Department). .

Versus

1. Union of India
The Secretary,
Government of India,
Ministry of Communication,
Department of Posts,
Dak Tar-Bhavan, New Delhi-110001.
2. The Chief Post Master General,
Maharashtra Circle,
Mumbai 400 001.
3. The Senior Superintendent of
Post Offices,
Mumbai North Division,
Mumbai-415612. ... Respondents

14) OA No.171/2017

P. K. Mhaisdhune
S/o Shri Kashinath Mahadu Mhaisdhune,
Aged about 63, R/o. H. No.2,
Bhakti Nagar, Co-op Housing
Society, behind Muktidham,

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

Nashik Road, District Nashik 422 101
(Office Address: Retired from
postal service on 31.03.2013). **Applicant**

versus

1. Union of India
The Secretary,
Government of India,
Ministry of Communication,
Department of Posts,
Dak-Bhavan, New Delhi-110001.
2. The Chief Post Master General,
Maharashtra Circle,
Mumbai 400 001.
3. The Post Master General,
Aurangabad Region,
Aurangabad-431002.
4. The Senior Superintendent of
Post Offices,
Nashik Division,
Nashik-422011.

. **Respondents**

15) OA No.184/2017

B. D. Maute,
S/o Shir Dagadu Trimbak Maule,
Aged about 63 years,
R/o Shri Ramnagr, 10th Mile Ojhar,
PO-Jaulke, via Ojhar Township,
District-Nashik 422207.
(Office Address: Worked as Sub Post
Master at Ojhar Township Post Office
under SSPo Nashik Dn, Nashik). **Applicant**

versus

1. Union of India
The Secretary,
Government of India,
Ministry of Communication,
Department of Posts,
Dak-Bhavan, New Delhi-110001.
2. The Chief Post Master General,

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

Maharashtra Circle,
Mumbai 400 001.

3. The Post Master General,
Aurangabad Region,
Aurangabad-431002.
4. The Senior Superintendent of
Post Offices,
Nashik Division,
Nashik-422011. **Respondents**

16) OA No.185/2017

M.A. Bhole,
S/o. Abdul Kadar,
Aged about 60 years,
R/o Nijampura Gali, Paranda,
Teh-PAranda, District-Osmanabad,
Maharashtra-413502.
(Office Address: Worked as Sub Postmaster,
under SPO, Osmanabad Division) **...Applicant**

versus

1. Union of India
The Secretary,
Government of India,
Ministry of Communication,
Department of Posts,
Dak-Bhavan, New Delhi-110001.
2. The Chief Post Master General,
Maharashtra Circle,
Mumbai 400 001.
3. The Post Master General,
Aurangabad Region,
Aurangabad-431002.
4. The Senior Superintendent of
Post Offices,
Osmanabad Division,
Osmanabad-422011.

. . . Respondents

17) OA No. 263/2017

N. v. Chavan,

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017,
 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015,
 671/2014, 672/2014, 673/2014, 674/2014

S/o Shri Vishnu Ratnoji Chavan
 Aged about 61, b/c Hindu Maratha,
 R/o H.No.514, Vir Savarkar Nagar,
 Kuwarbav, Po-MIDC, Ratnagiri,
 District-Ratnagiri 415639.
 (Office Address: Retired from
 postal department).

...Applicant

Versus

1. Union of India
 The Secretary,
 Government of India,
 Ministry of Communication,
 Department of Posts,
 Dak-Bhavan, New Delhi-110001.
2. The Chief Post Master General,
 Maharashtra Circle,
 Mumbai 400 001.
3. Director of Postal Service,
 PMG Office, Goa Region,
 Panji 402201.
4. The Senior Superintendent of
 Post Offices,
 Ratnagiri Division,
 Ratnagiri-415612.

...Respondents

18) OA No.450/2017

N.H.Majgaonkar,
 S/o Shri Harish Chandra Yashwant
 Mangaonkar, 553, Yash Laxmi,
 Post Karla, Tal. Dist. Ratnagiri 415612.
 Aged about 58, b/c OBC, R/o H. No.553,
 Yash Laxmi, Po Karla, District Ratnagiri,
 (Office Address: Working as Sub Postmaster
 Khalgaon Post Office) 415620.Applicant

versus

1. Union of India
 The Secretary,
 Government of India,
 Ministry of Communication,
 Department of Posts,

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

Dak-Bhavan, New Delhi-110001.

2. The Chief Post Master General,
Maharashtra Circle,
Mumbai 400 001.
3. Director of Postal Service,
PMG Office, Goa Region,
Panji 402201.
4. The Senior Superintendent of
Post Offices,
Ratnagiri Division,
Ratnagiri-415612. . . **Respondents**

19) OA No. 495/2017

Shri Shamrao Tatoba Desai
Postal Assistant (BCR)
Vasco-Da-Gama (Goa) Post Office,
(MIG) (Via) MAPUCA (Goa)
Pin 403802.
Goa Divn, MAPUCA Pin 403 507
Age 61 years, residing at
Block No.E203, 1st floor,
Umiya Quotros Apartments,
At PO ATTO P.O. Dabolim,
(Goa) Pin 403 801

...Applicant

versus

1. Union of India
The Secretary, Department of
Director General Posts
Department of Posts,
Dak Bhawan, Sansad Marg,
At.P.O. New Delhi 110001
2. Chief Postmaster General,
Maharashtra Circle,
Old GPO Building, 2nd Floor,
W.H. Marg, Fort, At P.O.
Mumbai-400 001.
3. The Postmaster General
Goa Region, Panaji H.O.
Building, Main Road, P.O.
Panaji (Goa), Pin-403 001.

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

4. Sr. Superintendent of Postmaster Offices, Goa Division, P.O. MAPUCA H.O. (Goa) Pin 403507.

... Respondents

(By Advocate Shri S.P.Singh in Sl.Nos.1 to 11, Shri V.A.Nagrani for Sl.Nos.12 and 14, Ms.Sujata Krishnan in Sl.No.15, Shri C.S. Temburnikar in Sl.Nos.13, 16 to 19 for applicants. By Counsels Shri R.R.Shetty in Sl.Nos.1 to 4, Ms.Naveena Kumai and Shri R.R.Shetty in Sl.Nos. 5, 6, 7, 9, 10, Shri V.S.Masurkar in Sl.Nos.11, 13 and 14, Ms.Naveena Kumai in Sl.No.12, Shri R.R.Shetty in Sl.Nos.15 to 19, Shri N.K.Rajpurohit in Sl.No.8 for the respondents)

Reserved on : 20-11-2019

Pronounced on : 18-12-2019

O R D E R

R.Vijaykumar, Member (A)

This batch of OAs have been filed by applicants who were initially appointed as Postman and after participating in a Limited Departmental Competitive Exam (LDCE) were selected and acted in the higher grade and post of Postal Assistant (PA), after which they received stagnation financial benefits under the Time Bound One Promotion (TBOP) Scheme on completion of 16 years, Biennial Cadre Review (BCR) on completion of further 10 years by virtue of their completing service in the same grade of PA. In respect of OA No.266/2017, the applicant was appointed as a Group 'D' or Multi Tasking Staff (MTS) as it was re-designated after the VIth Pay Commission and then

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

participated in an LDCE and got selected as PA, after which he received TBOP and BCR. None of the applicants were thereafter granted the 3rd MACP on the basis that their recruitment as PA constituted promotion and further, their upgradations to TBOP and BCR would be counted against the financial benefits available under MACP-I, II and III. On this aspect, all the OAs listed above raise identical issues of law and precedent and by common consent of the applicants represented through their counsels, have been heard together and a common order is being passed. For the purpose of elucidating facts, the leading case is taken as OA No.573/2015. The reliefs claimed are identical in all the OAs, although slightly differently worded. For the purpose of this judgment, the reliefs claimed in OA No.573/2014 are as follows:

"a. The impugned order vide memo No.AR/St-1/Reptn/MACP/NKG/OSD/2013 dated 24.09.2013 forwarded by respondent no.4 may kindly be declared illegal, unjust, improper and deserves to be quashed and set aside.

b. The respondent may kindly be directed to confer the grade pay Rs.4600/- & MACP-III on completion of 30 years of service in Postal Assistant cadre with all consequential benefits.

c. The respondents may kindly be directed to grant all consequential benefits, arising out due to entry grade.

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

d. That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

e. That the costs of this application may be awarded to the applicant."

2. The applicants urge that the elevation from Group 'D' or MTS to PA is a fresh recruitment and is an appointment to a higher cadre outside the line of promotion and hierarchy in the particular cadre. Further, while granting TBOP on completion of 16 years of service under the scheme that began in 1983 and while granting BCR upgradation in the scheme which began in 1991 after 20 years of service, the computation of service period was taken from the date of entry as PA and therefore, the same basis should have been adopted for granting MACP-III. However, the respondents have wrongly treated the elevation to PA as a promotion. They also urge that this interpretation is not in conformance with the rules of the MACP Scheme since the applicant has completed 30 years of service in the same grade of PA. The applicant relies on the orders of the coordinate bench of this Tribunal at Jodhpur in OA Nos.382, 353 and 354/2011 dt.22.5.2012 - in the lead case Bhanwar Lal

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

Regar v. Union of India and Ors., OA No.354/2011 -

Hardewa Ram Dhaka v. Union of India and Ors. and the submissions on compliance filed by respondents in OA No.55/2011 to the Jodhpur Coordinate Bench of this Tribunal in **Rameshwar Lal v. UOI & Ors., OA No.55/2011** decided on 16.8.2011.

3. The respondents have filed their reply and have referred to the interim orders of the Hon'ble High Court of Rajasthan at Jodhpur staying the orders of the Tribunal in **Bhanwar Lal Regar etc.** (supra) as above.

4. Rejoinder has been filed citing developments in the case before the Hon'ble High Court of Jodhpur and reply has also been filed to the Rejoinder by the respondents.

5. The learned counsels for the applicant relied on the decision in **Bhanwar Lal Regar and Ors.** (supra) in the batch of cases led by OA No.382/2011 decided by the Jodhpur coordinate bench of this Tribunal on 22.5.2012 for an Extra Departmental Agent (EDA) who became a Group 'D' employee and after qualifying in LDCE, became a Postman and then a PA in which he received TBOP and then second MACP, which was withdrawn on the grounds that he had received two

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

promotions and one upgradation. The Bench held that the movement from EDA to Group 'D' was a fresh appointment and this was not disputed by respondents. It held that the movement thereafter, to Postman and PA were by a process of selection and cannot be called promotion. For this purpose, it referred to the definition of the term promotion as held by the Hon'ble Apex Court in **Director General, Rice Research Institute, Cuttack & Anr. v. Khetra Mohan Das** (1994 (5) SLR 728). The Bench held that the grant of TBOP, BCR and MACP had to be counted from the date of entry as PA and allowed the OAs. The Hon'ble High Court of Rajasthan at Jodhpur considered these arguments and after noting that "Learned counsel appearing on behalf of the appellant on asking again and again, failed to point out any provision for promotion to the post of Postman/Sorting Assistant. On the other hand, from perusal of the orders of appointment to the post of Postal Assistant/Sorting Assistant, it is apparent that the respondent-original applicants faced an examination, may that be a limited competitive examination, i.e. nothing but direct recruitment," and upheld the orders of the bench. The matter was taken to the Hon'ble Apex Court which condoned the delay and

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

dismissed the SLP in short order dt. 10.8.2018. The applicant also relies on the orders of the coordinate bench of this Tribunal in a batch cases led by **Jagdish Prasad Sharma v. UOI and Ors. in OA No.321/2011 etc.** dt. 4.7.2014, where the decision in **Bhanwar Lal Regar (supra)** was relied on by the applicants. Per contra, the respondents referred to the Judgment dt. 6.9.2011 of the Hon'ble Apex Court in **Bharat Sanchar Nigam Ltd. v. R.Santhakumar Velusamy & Ors. in 2011(3)SLJ 353** that once a person has been granted a financial upgradation though after passing a competitive examination, then it will be treated as promotion. This case was decided in the context of the plea for reservation for an OBC category employee. The Hon'ble Apex Court had held as follows:

"21 On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge:

(i) Promotion is an advancement in rank or grade or both and is a step towards advancement to higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both that is advancement to a higher position and advancement to a higher pay scale - are described by the common term 'promotion', does not mean that they are the same. The two types of promotion are distinct and have different connotations

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

and consequences.

(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay-scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simplicitor can be said to be a promotion in its wider sense that is advancement to a higher pay scale.

(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation, can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simplicitor. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

simplicitor. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation. A

(v) Where the process is an upgradation simplicitor, there is no need to apply rules of reservation. But where the upgradation involves selection process and is therefore a promotion, rules of reservation will apply.

(vi) Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation".

While noting that **Bhanwar Lal Regar (supra)** was under stay by the Hon'ble High Court, the OA was dismissed. On appeal, the Hon'ble High Court of Rajasthan at Jaipur Bench in W.P. No.11538/2014 held in Judgment dt. 10.12.2015 referred to the previous decision of the same Court in Writ Petition No.11709/2013 **Union of India and Ors. v. Har Govind Sharma** and the Judgment of the Hon'ble High Court of Gujarat in SCA No.829/2014 **Union of India v. Chimanbhai Ramabhai Parekh** and after noting that the Division Bench of the High Court of Rajasthan at Jodhpur had upheld the orders of the Jodhpur Bench in **Bhanwar Lal Regar**

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

(supra) in judgment dt. 10.8.2015, directed the respondents to accord the same benefit to the employees. This matter was also taken to the Hon'ble Apex Court in SLP(Civil)No(s).22650/2018 **Union of India and Ors. v. Jagdish Prasad Sharma**, where it was ordered as below:

"Delay condoned.

We find no merit in these petitions. The special leave petitions are, accordingly, dismissed.

Pending applications stand disposed of."

The learned counsel for the applicant also relied on the Judgment of the Hon'ble High Court of Rajasthan at Jodhpur in **Union of India and Ors. v. S.N. Singh Bhati**, **Writ Petition No.171/2016** decided on 3.1.2018 from the decision of the Jodhpur Bench of this Tribunal where the issue identified was as below:

"4. Issue concerned was whether Mailman/ Extra Departmental Agents/Gram Dak Sewaks appointed as a Sorting Assistant/Postal Assistant were liable to be treated as having been promoted or it was a case of direct recruitment. This in turn impacted the benefit of placement in the higher grade under the Modified Assured Career Progression Scheme. The view taken by the Central Administrative Tribunal is that it is a case of direct recruitment and not a case of promotion".

The Hon'ble High Court noted the following decisions

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

of the Hon'ble High Court of Madras in **Civil Writ Petition No.30629/2014 Union of India & Ors v. D.Sivakumar and Anr**, against which decision SLP (C) No.4848/2016 **Union of India & Ors. v. D.Sivakumar** was dismissed by the Supreme Court on 16th August, 2016 after condoning the delay. Review sought of the order dt. 16th August, 2016 vide Review Petition (C) No.1939/2017 was dismissed by the Supreme Court as recently as on 13th September, 2017 and that of a Division Bench of the Hon'ble High Court of Karnataka in Writ Petition No.200807/2016, **The Union of India & Ors. Shri Basanna Nayak** and which have been implemented. The Hon'ble High Court, thereafter held that since the Review Petitioners did not dispute these decisions having attained finality, "The decision passed by the Central Administrative Tribunal brings out that Group-D employees, irrespective of their seniority participated in a merit based selection and appointed to the higher post were never treated as a case of promotion. The examination was not a Limited Departmental Qualifying Examination but was a Limited Departmental Competitive Examination. Before the MACP Scheme was introduced, the department had TBOP/BCR Financial Upgradation Schemes and under

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

the said Schemes benefit was granted treating the appointment as one of direct recruitment and not by way of promotion".

6. The judgment referred by the Hon'ble High Court at Jodhpur of **D.Sivakumar (supra)** decided by the Hon'ble High Court of Madras was based on the decision of the Madras Bench of this Tribunal which relied entirely on the decision of in **Bhanwar Lal Regar (supra)**, but made it subject to the outcome of **Civil W.P. No.11414/2012** of **Hardeva Ram Dhaka**, one of the three applicants whose cases were decided by the CAT, Jodhpur under the lead case of **Bhanwar Lal Regar (supra)** and was pending at that time before the Hon'ble Apex Court. Before the coordinate bench, respondents had urged reference to the Recruitment Rules, but this was overcome by virtue of the reliance on the precedent Judgment in **Bhanwar Lal Regar (supra)**. The Hon'ble High Court upheld these orders and when the matter was taken to the Hon'ble Apex Court, the SLP was dismissed with the following order:

"Heard learned counsel for the petitioners.
Delay condoned.

We see no reason to entertain this petition under Article 136 of the Constitution of India. The special leave petition is, accordingly, dismissed.

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

However, the question of law is kept open".

The Review Petition filed was also dismissed by the Hon'ble Apex Court and the orders were implemented in the case of the applicant.

7. The learned counsel for the applicant also relied on the decision of the coordinate bench at Jaipur in **Dev Karan Mahala and Ors. v. UOI in OA No.313/2011** and **Surendra Peepliwal v. Union of India & Ors. in OA No.805/2012** which followed the decision of the Tribunal in OA No.137/2012 and recorded the following view in support:

"5. The Tribunal finally allowed the Original Application No.137/2012 and 10 other connected matters and the impugned order was quashed and set aside. The Tribunal held that the impugned order of the respondents (Annexure-A/1 is bad in law from both the points stated above that (I) being treating the passage from Mailman to Sorting Assistant as promotion, and (ii) not appreciating MACP as inferred from the own circulars of the Government. It was held that the MACP is a liberal scheme allowing financial upgradation to those who have not been able to earn promotion in the regular promotion and that it, hence, need to be liberally understood".

The Hon'ble High Court of Rajasthan at Jaipur adopted the analogous decision in OA No.469/2011 that had been upheld by the Hon'ble High Court at Jodhpur on 10.8.2015 in **Writ Petition No.11709/2013** and declined

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

to take a different view of the matter. This decision was taken in case of respondents **Kulwant Singh** whose OA reference have not been cited and **Surendra Peepliwal** whose **OA No.805/2012** had been allowed. Review Petition was also dismissed on 7.3.2018 and the SLP was dismissed by the Hon'ble Apex Court which ordered as follows:

“Delay condoned.

We are not inclined to interfere in the matter. The special leave petitions are, accordingly, dismissed.

Pending applications stand disposed of.

However, the question of law is kept open”.

Learned counsel also relied on the orders of respondents dt. 19.2.2019 of the office of the Superintendent of Post Offices, Sikar (Annexure-AF/13), which on perusal, notes that the Hon'ble High Court had not appreciated **S/Shri Mool Chand Kalawat, Ex. APM Neem Ka Thana MDG & Anand Prakash Bhatnagar, Ex. SPM Mundru**, and was made subject to the condition that this may not be treated as a precedent in other cases. He also referred to a clarification issued by respondents on 25.4.2011 which reads as below:

Sl.No.	Doubts	Clarification
1	Whether to consider	In accordance with the Para-9 of Annexure-I

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

2

appointment to of MACPS dated 18 Sep Gr. D cadre as 2009, regular service entry grade and for the purpose of to Postmen cadre MACPS commences from as one promotion the date joining of a post in direct entry grade on a regular basis. In the present Whether the case before us, the appointment to official was selected the cadre of based on seniority in Postman post as GDS and joined the entry grade group "D" post & ignoring the Gr.D later, he was declared post held prior successful in Postman to the exam, in which he had appointment as appeared fulfilling the official the eligibility wrote the Postman condition of Gramin examinations from Dak Sevaks and Gp "D" cadre thereafter he was directly. If so, allowed to join in it may also be Postman cadre as please clarify direct recruit. whether the Accordingly, the services rendered official has joined in in Gr.D post may Postman cadre under be counts for the direct recruitment MACP and Pension quota on regular basis benefits. & as such the regular service for the purpose of MACPS commences from the date of joining in Postman cadre as direct recruit basis. The issue is clarified accordingly.

8. Learned counsel for applicant also referred to the decision of the Hon'ble High Court of Karnataka in **Writ Petition No.200807/2016 (S-CAT) on The Union of India and Ors. v. Shri**

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

Basanna Nayak in orders dt. 20.9.2016 which reviewed the orders of Bangalore Bench of this Tribunal and in which, a direct recruit as Group 'D' was promoted as Postman and then as PA and after receiving TBOP was granted MACP-II which was then withdrawn by respondents. The Hon'ble High Court relied on the decision of the Hon'ble High Court of Rajasthan at Jodhpur in **Bhanwar Lal Regar (supra)** and also referred to the decision of the hon'ble High Court of Delhi in the case of **Union of India and Ors. v. Shakeel Ahmed Burney** in **Writ Petition (C) No.4131/2014** which had been remanded to the Principal Bench and had again come before the Hon'ble High Court as stated by respondents in the present case and is pending for orders. The orders are passed by reference to and by reading the contents of the appointment orders and by inferring that these orders suggest that these elevations as Postman and PA were direct recruitments and not promotion. The learned counsel also urged that these precedents would bind this Tribunal by virtue of the principles of judicial propriety.

9. In a batch of OAs led by OA No.93/2019 of **Natvarbhai S.Makwana v. UOI and Ors.**, the issue

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

considered there was for Postmen who had appeared in LDCE and become PA which they had contended was not a promotion, but a direct appointment. They have referred to the decisions in **Bhanwar Lal Regar (supra)**, **D.Sivakumar (supra)**, **P.G.Mathad v. Department of Posts in OA No.952/2016**, **Shakeel Ahmed Burney (supra)**, which is now again pending before the Hon'ble High Court. Further, in **A.M.Jayarajan v. UOI & Ors.**, **OA No.967/2017 Ernakulam Bench** of the Tribunal noted the contentions of respondents in terms of the RRs, the lack of reference to the RRS in the previous referred judgments and the aspect of judicial propriety and made the following observations which guided it in its decision to allow the OAs:

“16. It is the contention of learned Counsel for respondents that since inception past practice consistently is of treating Postal Assistant from the post of postman in nature of promotion and it also is settled law that while interpreting a Recruitment Rule a past practice consistently followed by the department needs to be kept in view by the Court, and that the issue is still res integra and if the matter is analysed in its entirety a different view, that joining as Postal Assistant from the post of postman is in nature of promotion could be there. She has contended that the judgment, reference of whom has come ibid, are accidental and per incuriam. She has referred the Rules regarding recruitment of Postal Assistant and has urged that prescribed criteria for educational qualification and age as condition precedent is prescribed for direct

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

recruitment to the post of Postal Assistant / Sorting Assistant but as far as 50% quota of said posts is concerned, which is filled up by LDCE promotion relates, there is no educational qualification or age criteria. She also has contended that for direct recruits there is a separate system of selection however some judgments are based upon premises that one common test is held for direct recruits as well as for the persons appointed from the cadre of the Postman but factually the situation is not as has been observed and added that though there is different procedure is provided by Rules for candidates who fails to pass confirmation examination, after appointment, but no note of it was taken in those judgments.

We did find some substance in the submission of learned counsel. Though various High Courts have held that that Postal Assistant from the post of postman is in nature of promotion but the Order dated 16.08.2016 passed by Hon'ble Supreme Court in SLP1 (C) No. 4848/2016, preferred against the order passed by the Hon'ble High Court of Madras wherein Hon'ble High Court of Madras has held that it is not a promotional post, shows that Hon'ble Supreme Court having seen no reason to entertain that petition under Article 136 of the Constitution of India though dismissed the SLP in limine however, the question of law was kept open by Hon'ble Supreme Court.

It can thus be said that the issue that Postal Assistant from the post of postman is in nature of promotion or not, cannot yet be said to have attained finality nor it can be said as not res integra. It is the contention of respondent that the decisions, reference of whom has come ibid, are accidental and per incuriam.

17. The Rules, regarding recruitment of Postal Assistant, prescribes criteria for educational qualification as well as age, as a condition precedent for direct fresh recruitment to the post of Postal Assistant / Sorting Assistant but as far as 50% quota of said posts, which is filled up by promotion

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

on the basis of LDCE relates, there is no educational qualification or age criteria prescribed. There is no common test for outsider fresh recruits and the persons appointed from the cadre of the Postman and rather for direct fresh recruits there is provision for written test and the persons appointed from the cadre of the Postman have to qualify the LDCE written test.

Consequence relating to for outsider fresh recruits and the persons appointed from the cadre of the Postman who failed to pass the confirmation test is also different. Rules for Recruitment for Recruitment to the Post of Time Scale Clerks and Sorters in Indian Posts and Telegraph Department 1971, which were in force at the time of appointment to applicants to the post of Postal Assistant, provides that the period of Probation would be of four years or of passing of the confirmation examination whichever is earlier. The note attached shows that :- In the case of direct recruits, failure to pass the confirmation examination in six chances within four years result in their discharge from service while in the case of departmental candidates they will be reverted to their former lower post. The Rules for Recruitment to the Post of Time Scale Clerks and Sorters in Indian Posts and Telegraph Department 2002 provides that the period of Probation would be of two years or of passing of the confirmation examination specified in the Director General Posts and Telegraph Letter No. 63-56/67- SPB-1 dated 21st June 73, whichever is earlier. The note attached thereto shows that :- In case a direct recruits fails to pass the confirmation examination in four chances within two years, the probation period will be extended to a maximum period of four years, within which he shall be allowed two additional chances of normal confirmation examination and/or two special chances and failure to do so entail stoppage of increments or confirmation or both and in case of recruitment by promotion or deputation or absorption, grade from which promotion or deputation or absorption to be

made. It is the contention of respondent that the decisions, reference of whom has come ibid are accidental and per incuriam.

18. It is true that all these aspects in pith and substance were not pressed for in said cases; the reference of whose judgment has come ibid and therefore it is the contention of respondent that the decisions ibid are accidental and per incuriam. The matter thus if is analysed in its entirety, there may be possibility of a different view, that joining as Postal Assistant from the post of postman is in nature of promotion. A decision, which is express and is found on reasons and which proceeds on consideration of issue, can only be deemed to be law declared and it will have a binding effect. The issue evolved in all said decisions obviously was whether Postal Assistant from the post of postman is in nature of promotion and therefore the decisions can't be said to be accidental.

19. Consistency in interpretation of law alone, can lead to public confidence in our judicial system. Hon'ble Supreme Court time and again has laid down that deviation from the same should be only on a procedure known to law. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium, in ignoratium of a statute or other binding authority. Principle of per incuriam is in relaxation of the rule of stare decisis. Rule of sub-silento is also an exception to the rule of precedents. A decision passed sub-silento, in the technical sense that has to be attached that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind.

20. It is true that all these aspects in entirety were not pressed for in relied upon cases, the reference of whose judgment has come ibid. This is illustrated by judgment of Hon'ble High Court of Rajasthan passed in CWP 11336/2012, which was cited as precedent almost in every succeeding decision. Needless to say, their Lordship in CWP 11336/2012 categorically have observed in the judgment

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

that," *Learned counsel appearing on behalf of the appellant on asking again and again failed to point out any provision for promotion to the post of Postman/ Sorting Assistant.*" Does principle of per incuriam extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration.

21. Ld. Counsel for respondents has urged to analyse the true import of Rule which, according to her, it would yield to conclusion that joining as Postal Assistant from the post of postman is in nature of promotion but the question, at threshold is whether the judgments, reference of whom has come *ibid*, are not an authority for the proposition canvassed by the applicants and whether this Tribunal needs to analyse the Rules in their entirety to exhaust and to see the possibility of a different view.

Once the entire import of Rule be considered, possibility of contrary view may or may not be there, but the question before this Tribunal is whether after aforesaid pronouncement by Hon'ble High Court and the coordinate Benches, is it still within the ambit of this Tribunal to reopen the question in this proceedings and to take the view, inconsistent with the law laid down by Hon'ble High Court and of Larger Bench of this Tribunal, because of the only reasons that some aspects have not been put forward for their consideration in those judgments.

22. It is trite-law that subordinate court is bound by the enunciation of law made by the superior court. Hon'ble High Courts undoubtedly are superior courts of the Tribunal. It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that healthy principles of judicial decorum and propriety warrants this Tribunal to follow the *ratio decendi* propounded by the High Court, in proper and traditional way and that deviation from the same should be only on a procedure known to law. Said principles illustrates from following decisions of Hon'ble Supreme court as well coordinate bench of the Tribunal.

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

23. Hon'ble Supreme Court in the case of *Lala Shri Bhagwan and Anr, v. Shri Ram Chand and Anr* 1965 SC 1767 laid down: "It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be re-considered, lie should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench, or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

In another case, namely *Tribhuvandas Purshottamdas Thakar v. Ratilal Motilal Patel*, [1968] 1 SCR 455 Hon'ble Supreme Court while dealing with a case in which a Judge of the High Court had failed to follow the earlier judgment of a larger Bench of the same court observed :-

"The judgment of the Full Bench of the Gujarat High Court was binding upon Raju, J. If the learned Judge was of the view that the decision of Bhagwati, J., in *Pinjare Karimbhai's* case and of Macleod, C.J., in *Haridas* 's case did not lay down the correct Law or rule of practice, it was open to him to recommend to the Chief Justice that the question be considered by a larger Bench. Judicial decorum, propriety and discipline required that he should not ignore it Our system of administration of justice aims at certainty in the law and that can be achieved only if Judges do not ignore decisions by Courts of coordinate authority or of superior authority."

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

24. In *S.I. Rooplal and Anr. Vs. Lt. Governor AIR 2000 SC 594* Hon'ble Supreme Court held that a coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench and it can only refer it to a larger Bench, if it disagrees with the earlier pronouncement. Expressing dissatisfaction in regard to the manner in which a coordinate bench of the Tribunal has overruled, in effect, an earlier judgment of another coordinate bench, Hon'ble Supreme Court observed in para 12:

"12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same tribunal as incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents....."

While expressing dissatisfaction in abovesaid words Hon'ble the Supreme Court in para 13 held as under:-

"13. We are indeed sorry to note the attitude of the tribunal in this case which, after noticing the earlier judgment of a coordinate Bench and after noticing the judgment of this Court, has still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment thereby creating a judicial uncertainty in

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

regard to the declaration of law involved in this case. Because of this approach of the latter Bench of the tribunal in this case, a lot of valuable time of the Court is wasted and parties to this case have been put to considerable hardship."

25 As noted above, Hon'ble Supreme Court in SLP1 (C) No. 4848/2016 has kept the question of law open, so the control to analyse the Rules in their entirety, to see possibility of a different view qua the issue whether joining as Postal Assistant from the post of postman, is in nature of promotion or otherwise, thus only vested either in Hon'ble Supreme Court or in larger bench of the High Court. Therefore, when it is not in the domain of this Bench to take the contrary view, it would only be a futile exercise to go into the import of the Rules and we therefore, by accepting the law laid down by Hon'ble High Courts and Coordinate Benches of this Tribunal on the issue, and hold that post of Postal Assistant is not a promotional post of the Postman".

10. The learned counsel for respondents Shri V.S.Masurkar invited the attention of the bench to the fact that in the case of **D.Sivakumar (supra)**, the Hon'ble Apex Court had made a simplicitor dismissal and had specifically left the matter open on the issue of law. Following judicial propriety, the orders of the Tribunal that were upheld by the Hon'ble High Court in the case of **Surendra Peepliwal (supra)**, were implemented although in the process of review, the judgment has subsequently been withdrawn by the Hon'ble High Court. This is in consonance with the

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

decision of the Hon'ble Apex Court in **L.Chandra Kumar v. Union of India, AIR 1997 SC 1125**, whereby decisions of the High Courts of respective jurisdiction will bind this Tribunal, while the rest of the High Courts may be referred for the purpose of assisting in the decision. In the present case, there is no judgment of the Hon'ble High Court of Bombay. In these circumstances, he argued that while considering precedents, weightage had to be given to those precedent decisions where reasoning was given and not otherwise. Arguments on behalf of respondents were continued by learned Senior Counsel, Shri R.R.Shetty who had filed written arguments. He referred to the decision of the Hon'ble High Court of Delhi in **Uttam Singh and Ors. v. Municipal Corporation of Delhi**, where Class-IV employees were permitted to write competitive examination conducted by the Municipal Corporation of Delhi for selection against 10% posts to be filled by promotion on this basis and for which the RRs set an essential requirement in qualifications of typing ability. The learned High Court observed that it was the settled legal position that appointment on promotion through an LDCE is not appointment by direct recruitment, but after observing

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

that the Draftsman of the RRs had made several errors, it found that there was a past practice of such appointees to clear the typing test within a period of two years subsequent to appointment as a condition thereof. The court was compelled, by the facts and circumstances, to interpret the Rules in a self-consistent and intelligible manner and then also held in keeping with the decision of the Hon'ble Apex Court in **N.Suresh Nathan and Anr. v. Union of India and Ors.**, AIR 1992 SC 564, that while interpreting RRs, a past practice consistently followed by the department needs to be kept in view. Although in the present case, the applicants have not pointed out to the existence of any such past practice, he argued that if the applicants wish to claim the GDS service in addition, the facts would lie against the applicants. He also noted that in the cases relied upon by the applicants, the RRs had not been seen in sharp distinction with **Uttam Singh (supra)**. He argued that this aspect was also observed by the Hon'ble High Court of Rajasthan at Jaipur in **Writ Review No. 328/2017 in W.P. No.14457/2016** and while referring to the reasons mentioned in the RP, the orders dt. 31.1.2017 were recalled. Although the orders in review

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

were against **Kulwant Singh** private respondent, the Writ Petition itself was ordered with the lead case as that of **Kulwant Singh** while the other respondent in the linked Writ Petition was that of **Surendra Peepliwal** which was one of the OAs decided by the Jaipur Bench in orders dt. 24.11.2015 and involved three applicants in the lead case therein. The Hon'ble Court noted that in contradistinction to cases of direct appointment, in the case of candidates eligible for LDCE-based elevation, there was a difference by way of elimination of age limit, different qualification, quota, examination system and a separate merit list. The petitioners in OA No.313/2011 which was the lead case along with OA of **Surendra Peepliwal** were heard in a separate Writ Petition No.18488/2016 along with other Writ Petition Nos.3560/2017, 3858/2017 and 3859/2017 by the Hon'ble High Court of Rajasthan at Jaipur and orders were passed on 10.5.2018 in which, the decisions of the Hon'ble High Court of Rajasthan, Jodhpur in **W.P. No.3968/2008 Ram Karan Kumhar v. Union of India and Ors.** dt. 31.5.2016 had considered promotions from PA to Inspector and noted that in the case of **Har Govind Sharma (supra)** decided at Jodhpur, the decision had

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

been taken without referring to the relevant provisions in the Recruitment Rules. The court also noticed the decisions in **D.Sivakumar, Shakeel Ahmed Burney, Har Govind Sharma, Shri Basanna Nayak, Jagdish Prasad Sharma (supra)** and held that MACP benefits can be conferred only after regular service rendered of 10, 20 and 30 years and if not promoted. It upheld the later view of the Jodhpur Bench in **Ram Karan Kumhar (supra)**. The Hon'ble Court also observed the following:

"12. In our opinion, the Tribunal has seriously committed an error in allowing original application relying upon the judgment of **Har Govind (supra)** which is now diluted by the subsequent decision of Division Bench Judgment. In view of the Rules, we are very clear that in view of promotion first benefit it to be granted from 10 years from the promotional post or from the new recruitment taken as confirmed. In that view of matter, the petitions deserve to be allowed."

11. In **Ram Karan Kumhar, Writ Petition No.3968/2008** decided on 31.5.2016 the Hon'ble High Court of Rajasthan at Jodhpur considered the case of the applicant who had entered service as PA and then appeared in the LDCE and was appointed as Inspector of Posts after which he represented for grant of first ACP benefits and second ACP benefits on completion of 12 and 24 years in the same post of Inspector. The

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

Jodhpur Bench had held in orders dt. 11.5.2007 that the applicant was not entitled to first ACP on completion of 12 years since he had received one promotion from PA to Inspector and he would get the second ACP as per rules after completion of 24 years of service from the date of initial entry. It was submitted before the Hon'ble High Court that PA have only one channel of promotion to the posts of LSG and then to HSG-II. The applicants also relied on the decision of the Hon'ble High Court in **Union of India and Ors. Har Govind Sharma W.P. No.1709/2013** and 22 others dt. 10.8.2015. The respondents had also referred to the clarification No.8 and 24(a) issued by the DOPT in OM dt. 10.2.2000 that promotion through departmental examination are to be treated as promotion for the purpose of financial upgradation under ACP Scheme. The Respondents further submitted that although the regular line of promotion of PA is to LSG, HSG-II and HSG-I, they are also eligible along with other grades to appear in the LDCE for promotion as Inspector of Posts. The Hon'ble High Court referred to the Recruitment Rules issued in 2001 for the post of Inspector and the ACP Scheme and its clarifications and observed:

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

.....In other words, merely because, the post of Inspector of Posts by promotion is filled in by way of limited Departmental Competitive Examination from amongst the employees holding the posts specified, their promotion to the post cannot be treated as direct entry. A bare perusal of the ACP Scheme and the clarification issued by the Government of India, makes it abundantly clear that for grant of two financial upgradation under the ACP Scheme, the entire government service of an employee shall be counted against regular promotion including the promotion through limited Departmental Competitive Examination availed from the grade in which an employee was appointed as direct recruit. We are of the considered opinion that where the rules specifically provides for promotion quota, may be to be filled in by way of limited Departmental Competitive Examination, the promotions made by the method specified as aforesaid, has to be counted as promotion for the purpose of ACP Scheme. Thus, the petitioner herein, who has already availed one regular promotion shall be entitled for consideration of his case for the purpose of second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In this view of the matter, the order impugned passed by the Tribunal does not suffer from any error so as to warrant interference by this court in exercise of its extra ordinary jurisdiction".

With regard to the case of **Har Govind Sharma** (supra) where the employees had entered service as MG/EDA/GDS and were selected as PA, the Hon'ble Court observed that in the absence of any provisions under the Rules to show that the appointment was made by way of promotion, such appointment had to be treated as direct recruitment. However, in the present case, the

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

rules provide that 66.66% of the posts of Inspector shall be filled in by way of promotion through LDCE and therefore the decision in **Har Govind Sharma** (supra) was not relevant. In other words, the crucial difference lay in the nature of the RRs applicable to the case. The Court also emphasized the relevance of the interpretation made that ACP counts regular service from the date of initial entry into regular service and not with reference to an intermediate post.

12. Learned counsel for respondents also referred to a decision of the Hon'ble High Court of Madras in **Writ Petition No.6505/2014** along with **Writ Petition No.4753/2015** of **M.V.Akkiniveeranan and Ors. v. Union of India and Ors.**, wherein the applicants had joined as PAs and had received TBOP or both TBOP and BCR financial upgradations and then had appeared in the LDCE and had been promoted as Assistant Accounts Officer (AAO). They claimed financial upgradation under the MACP and challenged the action of respondents in treating the appointment of AAO as a promotion. The main issue considered by the Hon'ble Court was on the argument that the AAO fell in a different hierarchy for the PA. The Court noted that

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

by virtue of working as PA, the applicants were eligible to write the examination to become AAO and this was an avenue provided to the PA to enable them to go to a different cadre by way of promotion. The Court upheld the view of the Tribunal that this was indeed a promotion and dismissed the Writ Petition, while holding that the reliance of the petitioners on the decisions in this case viz. **(a) Director General of Posts and others v. S.Ravindran and others (1997) SCC (L&S) 455, (b) Bhanwar Lal Regar and Others in D.B.Civil Writ Petition No.11336 of 2012. (High Court of Rajasthan), (c) Union of India and others v. Shakeel Ahmed Burney, in W.P. (C) No.4131 of 2014. (High Court of Delhi, (d) Union of India and others v. D.Sivakumar and Anr. In W.P. No.30629 of 2015 (High Court of Madras) and (e) Union of India and others v. Shakeel Ahmed Burney in SLP (C) No.4848 of 2016 (Supreme Court)**, were not relevant to the instant case. On the part of the Bench, we note that these orders do not make direct mention of the RRs relevant to the matter and which were considered by the Hon'ble High Court of Rajasthan in **Ram Karan Kumhar (supra)** but since the Court studied the issue of eligibility, reference was presumably made to the Recruitment Rule.

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

13. Learned counsel for the respondents referred to the decision of the Hon'ble High Court of Karnataka at Dharwad in **W.P. No.102322/2018 (S-CAT)** in **The Union of India and Ors. v. Smt.R.K.Kulkarni** dt. 27.11.2018, where the employee was appointed as a Postman, received promotion as PA, was granted TBOP and BCR financial upgradation and then sought MACP MACP-III. The Hon'ble Court referred to the RRs for the post of PA and relied on the previous decision of a coordinate bench of the same Court in **W.P. No.57935/2017 in Union of India and Ors. v. M.G.Shivalingappa** decided on 2.8.2018, where it had been held that appointment as Sorting Assistant or PA through LDCE was a departmental promotion. The Hon'ble Court noted that the previous Judgment in **M.G.Shivalingappa** had observed, from a reading of the RRs in respect of this category, that 50% of posts were filled by direct recruitment and the remaining by promotion through test. The Hon'ble Court took notice of the two orders of the Hon'ble Apex Court in **Bhanwar Lal Regar and D.Sivakumar** (supra) and relied on the rulings of the Hon'ble Apex Court in **Kunhayammad & Ors. v. State of Kerala and Ors.**, AIR 2000 SC 2587, on interpretation of the doctrine of merger in regard to its orders on

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

the merger of SLP/SLA as below:

“16. Before going into the orders passed by the said Courts, it would be useful to refer to a judgment of the Hon'ble Supreme Court in the case of **Kunhayammed and others v. State of Kerala and another**, reported in AIR 2000 SC 2587 (**Kunhayammed**). In the said judgment, the Hon'ble Supreme Court was considering the doctrine of merger in the context under Article 136 read with Article 141 of the Constitution of India and also in the context of Order XLVII Rule 1 of the Code of Civil Authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. But, this does not amount to saying that the order of the Court, Tribunal or Authority below has stood merged in the order of the Supreme Court rejecting special leave petition or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties. The Hon'ble Supreme Court went on to hold that once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked, the order passed in appeal would attract the doctrine of merger, the said order may be of reversal, modification or mere affirmation.

17. In the circumstances, it is held that the dismissal of the Special Leave Petitions arising from the Jodhpur Bench of Rajasthan High Court and the Division Bench of Madras Court would not imply that it becomes the law of the land in the context of Article 141 of the Constitution particularly when the question of law has been left open by the Hon'ble Supreme Court vis-à-vis the controversy in this case. In the circumstances, there is no substance in the contention of learned counsel for the respondent that in view of the

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

dismissal of the Special Leave Petition by the Hon'ble Supreme Court vis-à-vis the order of the Jodhpur Bench of Rajasthan High Court and the Division Bench of Madras High Court, the same ought to be applied in the present case, rather than the order of Division Bench of Principal Bench of Karnataka High Court dated 02.08.2018".

14. On this basis, the Hon'ble High Court of Karnataka stated that these decisions of the Hon'ble Rajasthan High Court and Hon'ble Madras High Court do not become the law of the land in the context of Article 141 of the Constitution, particularly when the question of law have been left open by the Hon'ble Apex Court in the case. The Court further noted that in both the cases the RRs had not been brought to the notice of the said benches and further, the Hon'ble High Court of Rajasthan at Jodhpur had made a specific observation that despite requesting the official respondents to place on record the provisions for promotion to PAs, this was not done by the official respondents. It was in those circumstances that these Courts had held that the appointment based on LDCE was only a direct recruitment. In the event that the RRs had now been presented, the Hon'ble Court held that the Rules clearly demonstrated that it was a case of promotion. The Court also observed in the context as follows:

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

"18. There is another reason as to why the order of the Jodhpur Bench of the Rajasthan High Court and the order of Division Bench of the Madras High Court cannot be applied ipso facto to the facts of the present case. In those orders reference has not been made to the Schedule to the Rules as in the instant case, which is extracted above. The mode of filling up of post of Postal Assistant or Sorting Assistant under the Rules was not brought to the notice of the said Benches. In fact, in the order of the Jodhpur Bench of the Rajasthan High Court, there is a specific observation regarding counsel for the appellant therein i.e., Union of India and the Postal Department, being repeatedly asked to place on record the provision for promotion to the post of Postal Assistant or Sorting Assistant. It has been observed that, no such provision was placed for perusal of the Court. In those circumstances, it was inferred that appointment pursuant to a departmental test i.e., 'Limited Competitive Examination' is nothing but, 'direct recruitment'. That the appointment made was in the nature of a direct recruitment and not a promotion which inference is contrary to the Rules. In the circumstances, by construing the said appointment to be one of direct recruitment and not promotion, a direction was issued to the Union of India as well as to the Postal Department to extend the benefits under MACP-III to the respondent therein. Similarly, in the judgment of the Division Bench of the Madras High Court, there is no reference to the Rules as well as to the Schedule under the Rules. In the circumstances, in paragraph 9 of the said judgment, it has been construed that the appointment of the respondent therein as a Postal Assistant was not by way of promotion and hence, similar directions were issued in favour of the employees. But in the instant case, our attention has been drawn to the Schedule to the Rules under which the nature of appointment has been clearly prescribed. Admittedly, in the instant case, the respondent was appointed to the post of

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

Postal Assistant on being qualified in the departmental test while she was already working as a Post Woman in the department. Hence, it is clearly a case of promotion.

19. Our attention has also been drawn to an earlier order of the Tribunal in O.A. No.1259/2014, wherein, it has been held that when a certain percentage of posts is earmarked exclusively for departmental candidates, it implies that it is a case of promotion as opposed to recruitment from open market insofar as the percentage earmarked for direct recruitment. In the said Original Application filed by Sri. Krishnaiah after considering as to whether the applicant therein was entitled to the benefits under MACP-III, the Tribunal on considering the judgment of the Jodhpur Bench of Rajasthan High Court in the case of Bhanawar Lal Regar held that the relevant rules to the schedule was not brought to the notice of the Jodhpur Bench of High Court of Rajasthan had it been done so, its decision would have been otherwise.

20. In the circumstances, in the instant case, we are persuaded to follow the order of the Co-ordinate Bench of this Court in the case of Sri. M.G. Shivalingappa and to hold that respondent herein is not entitled to the benefits under MACP-III Scheme.

21. For the aforesaid reasons, we are also not inclined to follow the order passed by the Co-ordinate Bench of Kalaburgi Bench of this Court in the case of Basanna Naik as the said order has also been passed following the order of the Jodhpur Bench, Rajasthan High Court as well as the order passed by Delhi High Court in W.P. No.(C) 4131/2014 in the case of Union of India and others V/s. Shakeel Ahmad Burney, disposed off on 05.08.2014 (29.09.2017). In fact, reference has been made to the order passed by the Delhi High Court in W.P. No.(C) 4131/2014 dated 05.08.2014 in the case of Krishnaiah as well as to the order passed in R.P. No.441/2014 by the Delhi High Court in respect of which reference has been made in the case of Krishnaiah and held that the said

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

orders have been made without reference to the recruitment rules and by placing reliance on the order of the Jodhpur Bench of the Rajasthan High Court in D.B. Civil Writ Petition No.11366/2012. We have also assigned the reasons as to why despite the Special Leave Petition arising out of the orders passed by the Jodhpur Bench of Rajasthan High Court and the Division Bench of Madras High Court having been dismissed can nevertheless not be made applicable to the present case. The question of law was kept open by the Hon'ble Supreme Court while dismissing the Special Leave Petition arising out of the order of the Division Bench of the Madras High Court."

15. Learned counsel for the respondents also referred to the case of **Shakeel Ahmed Burney** (supra), in which the Principal Bench had allowed OA No.3756/2011 on 21.12.2012 based on **Bhanwar Lal Regar** (supra). The Writ Petition filed before the Hon'ble High Court of Delhi in **Writ Petition No.4131/2014** was dismissed by the Hon'ble High Court on 5.8.2014, but on the Review Petition filed, the Hon'ble High Court passed orders on 5.8.2014 remanding the matter to the Principal Bench. The Principal Bench reiterated its reliance on **Bhanwar Lal Regar** (supra) in orders dt. 3.11.2015 against which Writ Petition No.2806/2016 was filed by the department. At the first hearing on 1.4.2016, these orders were stayed and that position continues as recorded by the Hon'ble High Court of Rajasthan at Jaipur in its orders on the Review Petition filed in

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

W.P. No.14457/2016 withdrawing the earlier orders passed in the matter on 31.1.2017. In this regard, learned counsel also emphasised that all the citations of the applicants relied on the decision taken by the Tribunal and the High Court of Rajasthan in **Bhanwar Lal Regar** (supra).

16. Learned counsel also referred to the Judgment of the Hon'ble High Court of Punjab & Haryana in **Writ Petition No.4829/2015** and four others of **Senior Superintendent of Post Offices, Karnal Division, Karnal and Ors. v. Nand Kishore and Anr.** in the lead case, where the applicants were initially appointed as GDS and then became Postman and further, became PA in accordance with RRs of 1971. They were granted TBOP and BCR financial upgradations on completion of 16 years and further 10 years respectively and had challenged denial of IIIrd MACP to them on the grounds that the elevation from Postman to PA was a promotion. The Chandigarh Bench of this Tribunal had relied on an earlier order passed by the Principal Bench in **OA No.607-PB-2012 - Kharaiti Lal and Ors. v. Union of India and Others**, decided on 14.12.2003 which held that appointment as PA after passing LDCE should be treated as a direct recruitment. The Hon'ble High

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

Court noted the decisions in the **Shakeel Ahmed Burney, D.Sivakumar and Anr, Har Govind Sharma, Basanna Nayak, Ram Karan Kumhar, Dev Karan Mahala and Ors.** (supra) and the fact that the Judgment in **Har Govind Sharma and S.N.Singh Bhati** (supra), had been diluted by the subsequent decision in **Ram Karan Kumhar** (supra). These various Judgments were extensively analyzed including two decisions of the Hon'ble High Court of Delhi in **W.P. (C) No.2887/2012 - Man Singh v. Union of India and Ors.** decided on 21.12.2012 and **Ajay Panday v. UOI 2014(14) S.C.T. 250**, where it had been held that filling up the promotional post from the feeder cadre by LDCE is a case of promotion and recorded its finding allowing the Writ Petitions by setting aside the orders of the Tribunal, thereby treating the selection as PA as a promotion and not as a direct recruitment.

17. The learned counsel also referred to the Judgment of the Hon'ble Apex Court in **Y.Najithamol and Anr. v. Soumya S.D. and Ors.**, (2016) 9 SCC 352, decided on 12.8.2016, wherein it was held that recruitment of GDS to the cadre of Postman through departmental examination was a direct appointment because promotion to a post can only happen when the promotional post

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

and the post being promoted from or a part of the same class of service. The Hon'ble Apex Court referred to the definition of promotion decided by the Hon'ble Apex Court in **C.C.Padmanabhan v. Director of Public**

Instruction:

“...This definition fully conforms to the meaning of 'promotion' as understood in ordinary parlance and also as a term frequently used in cases involving service laws. According to it a person already holding a post would have a promotion if he is appointed to another post which satisfies either of the following two conditions, namely-

- (i) that the new post is in a higher category of the same service or class of service;
- (ii) the new post carries a higher grade in the same service or class”.

The crucial determination for this analysis were the RRs on the subject. Learned counsel argues that the definition of promotion as reiterated by the Hon'ble Apex Court in the case also provides the underlying reasons why the appointments through LDCE within the departmental employees of the Postal Department to which GDS do not belong, are indeed in the nature of promotion and are not to be considered as direct recruitment. With regard to the principles of judicial propriety, he asserted that the Hon'ble Apex Court had

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

already kept the question of law open and referred to the views expressed by the High Court of Karnataka at Dharwad (supra) in his support. Further, he urged that the decision of the Ahmedabad Bench of this Tribunal in OA No.93/2019 etc. entirely followed **Bhanwar Lal Regar** (supra) directly or through the medium of the other Judgments cited in the matter and had adopted those decisions purely as a matter of judicial propriety. However, in terms of the decisions taken by the Full Bench of this Tribunal at the Principal Bench in **OA No.555/2001 along with six other OAs** in **Dr.A.K.Dawar v. Union of India and Ors.** on 16.4.2004, it was held that various benches of this Tribunals need to follow certain principles for deciding cases in the face of Judgments passed by High Courts and laid down the following in para 17 of its order:

“17. Consequently, we hold:-

1. that if there is a judgment of the High Court on the point having territorial jurisdiction over this Tribunal, it would be binding;
2. that if there is no decision of the High Court having territorial jurisdiction on the point involved but there is a decision of the High Court anywhere in India, this Tribunal would be bound by the

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

decision of that High Court;

3. that if there are conflicting decisions of the High Courts including the High Court having the territorial jurisdiction, the decision of the Larger Bench would be binding; and

4. that if there are conflicting decisions of the High Courts including the one having territorial jurisdiction then following the ratio of the judgment in the case of Indian Petrochemical Corporation Limited (*supra*), this Tribunal would be free to take its own view to accept the ruling of either of the High Courts rather than expressing third point of view".

Learned counsel referred to the orders passed by the Bombay Bench of this Tribunal in OA No.509/2012 dt. 30.11.2016 in a similar case involving Group 'D' employees who were elevated as Postman after passing an LDCE and then received ACP/MACP upgradations, but one upgradation was denied on treating the elevation from Group 'D' to Postman as promotion. This Bench of the Tribunal then proceeded to examine the decision in **Bhanwar Lal Regar** (*supra*) and noted the failure of respondents to present the RRs in support of their contentions. The Bench also noted that in contrast to pleadings of official respondents in **Shakeel Ahmed**

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

Burney (supra) before the Principal Bench in the case being heard, the respondents had extensively relied on the RRs of 1969 which supported their position. After discussing and highlighting the Judgment of the Hon'ble High Court of Delhi in **Uttam Singh and Ors.** (supra), the OA was dismissed upholding the orders of the department.

18. In rebuttal, learned counsel for applicant Shri Vicky Nagrani argued that the Ahmedabad Bench of this Tribunal had adequately considered all aspects including the RRs and the difference between direct recruit applicants and departmental applicants. Further, various High Courts had also passed Judgments that supported the case of the applicants. On the aspect of judicial propriety he relied on the ruling of the Hon'ble Apex Court in **S.I.Rooplal and Anr. v. Lt. Governor, AIR 2000 SC 594**, that in case of difference of opinion between two coordinate Benches, the matter should be referred to a larger Bench. Further, he referred to the interpretation by the Ahmedabad Bench orders, orders of the Hon'ble Apex Court in SLP No.48/2016 in **D.Sivakumar** (supra), keeping the question of law open, wherein the Bench recorded as follows:

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

"25 As noted above, Hon'ble Supreme Court in SLP(C) No. 4848/2016 has kept the question of law open, so the control to analyse the Rules in their entirety, to see possibility of a different view qua the issue whether joining as Postal Assistant from the post of postman, is in nature of promotion or otherwise, thus only vested either in Hon'ble Supreme Court or in larger bench of the High Court. Therefore, when it is not in the domain of this Bench to take the contrary view, it would only be a futile exercise to go into the import of the Rules and we therefore, by accepting the law laid down by Hon'ble High Courts and Coordinate Benches of this Tribunal on the issue, and hold that post of Postal Assistant is not a promotional post of the Postman".

In regard to the various judgments cited by the respondents during arguments, learned counsel for the applicant Shri S.P.Singh argued with reference to Annexure AF-11 which are clarifications issued by the respondents that he states is related to GDS and was irrelevant to the present issued. Further, he argues that the interpretation of the respondents drawing on Annexure AF-12, a letter of the department dt. 13.4.2018 on promotion to Group 'D' officials to PA was also wrong and not relevant to the present matter, while pointing out that the decisions of the Hon'ble High Court of Rajasthan in the case of **Kulwant Singh** and **Surendra Peepliwal** which followed **Bhanwar Lal Regar** (supra) have been implemented. He also drew support from the Judgment of the Hon'ble High Court of Punjab & Haryana which had noted that the promotional

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

post of Inspector was not in the promotional hierarchy for PA. He also reiterated the need for this Bench to observe canons of judicial propriety.

19. We have heard the learned counsel for the applicants and the learned counsel for the respondents at length and have carefully considered the facts, circumstances, law points and rival contentions in the case.

20. In order to deal with the arguments of respective parties, we will first look at certain fundamental issues raised by them that have relevance to the present case. Many of the applicants/petitioners in these cases have sought to apply the principles inhered in the scheme of TBOP and BCR as also applicable to the ACP and MACP schemes. The Hon'ble Apex Court has held in **Union Of India & Ors vs M.Mathivanan**, (2006) 6 SCC 57, that the services referred to under the ACP and MACP differ from the description of service in the TBOP and BCR schemes. The eligible conditions of 16 years of service in TBOP and 10 years of service in BCR included non-regular, as well as,

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

regular service, but the essential condition was that the service had to be rendered in the same grade. However, in the ACP and MACP Schemes, the term used is regular service wherein the date of entry into regular service of the Government is the critical parameter and not the grade in which the employee was stagnating. The Hon'ble Apex Court's view are as under:

13. Reading of the above two paragraphs makes it abundantly clear that so far as placing of an officer in the "next higher grade" is concerned, what is relevant and material is that such official belonging to basic grades in Groups 'C' and 'D' must have completed "sixteen years of service in that grade". The said paragraph nowhere uses the connotation "regular" service. Para 2 which provides for the Departmental Promotion Committee and consideration of cases of officials for "promotion", provides for sixteen years of "regular" service. The Tribunal, therefore, rightly considered para 1 as relevant and held that basic eligibility condition for being placed in the next higher grade is that the officer must have completed sixteen years of service in the basic grade in Group 'C' and Group 'D'. Though in other paragraphs, the service was qualified by the adjective "regular", the said qualification was not necessary for the purpose of para 1. Since the employee wanted the benefit of placement in "next higher grade", what was required to be established by him was that he had completed sixteen years of

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

service in the grade and the said requirement had been complied with in view of the fact that with effect from 30.9.1983 he was appointed as Warrant Officer. He was, therefore, entitled to the benefit of "next higher grade" under para 1 from 1999. The authorities were, therefore, not justified in rejecting the claim and accordingly the petition was allowed. The High Court rightly upheld the direction of CAT".

On the above basis, it is clear that ACP and MACP become applicable from the date of entry and promotions or financial upgradations have to be seen over the period of such service with one promotion prior to 1999 excluding one financial upgradation under the ACP and similarly, each promotion or more financial upgradation under TBOP/BCR/ACP excluded similar number of upgradations under the MACP Schemes.

21. On the aspect of the distinction between promotion and direct appointment which had come up before the Hon'ble Apex Court in **Y.Najithamol and Anr.** (supra), that person's elevation would be considered as a promotion if it fulfills either of the conditions that the new post was in a higher category of the same service or classes of service or the new post carries higher grade in the same service or

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

class. In that case, after extensive discussion of the RRs for Postman, the Hon'ble Apex Court ruled that EDA/GDS were civil posts, but they were not part of the regular service of the Postal Department. Therefore, an EDA/GDS becoming a Postman or other post in the Postal Department was a direct appointment. Apart from this principle that may be drawn from the above appointment decision of the Hon'ble Apex Court, lies the interpretation of the RRs itself and which the Hon'ble Apex Court itself described as at the heart of the controversy. This description of promotion was also an elaborated in **R.Santhakumar Velusamy** (supra) by the Hon'ble Apex Court although the elaboration was made in order to arrive at a distinction between promotion and upgradation.

22. On the aspect of precedents which has been urged by the learned counsel for applicants and argued in response by the learned counsel for respondents, it is of relevance to recall the observation of Justice H.R.Khanna in the Landmark Judgment **Kesavananda Bharati v. State of Kerala**, AIR 1973 SC 1461, where he noted "The Judges in fact, shine with reflected glory, for their judgments verily reflect the industry of the counsels appearing before them". In **Peter v. Sara**,

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

2006 (4) KLT 219, the Full Bench of the Hon'ble High Court of Kerala had observed:

“..where a precedent is not followed and another decision is rendered, in view of the conflicting position, the legal antinomy must be resolved by a Division Bench, Full Bench, Larger Bench, as the case may be, where one view would have to be formally overruled.”

Further, the Hon'ble Apex Courts had held in **Ettappadan Ahammedkutty v. E.P. Abdulkoya and Anr**,

2008 (1) KLT 851 SC:

“If any smaller or coordinate bench unfortunately overlooks or omits to refer to an earlier binding precedent of a larger or coordinate bench and a conflict... exists such later decision has no binding sway and must be reckoned as rendered per incuriam. Such decisions per incuriam cannot be followed. Subordinate Courts with respect must choose to follow the earlier binding precedents notwithstanding the later per incuriam decision of the smaller or coordinate bench.”

This Judgment referred to the observations of the Apex Court in **Mamaleshwar Prasad v. Kanhaiya Lal (Dead)**,

AIR 1975 SC 907:

“Certainty of the law, consistency of rulings and comity of Courts all flowering from the same principle converge to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached,

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission. No such situation presents itself here and we do not embark on the principle of judgment per incuriam".

On the aspect of which Judgment to adopt in terms of their chronology, the Hon'ble Apex Court held in **Delhi Transport Corporation v. D.T.C. Mazdoor Congress** (1991) Supp. SCC 600:

"...a decision which is not expressed and is not found on reasons nor proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Art. 141 of the Constitution."

Further, in **State of U.P. v. Synthetics & Chemicals Ltd.** 1991(4) SCC 139, the Hon'ble Apex Court held:

"Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent...A conclusion without reference to relevant provision of law is weaker than even casual observation".

Further, on the intelligent choice to be exercised by a Court when faced with conflicting decisions of the Apex Court or of a superior Court, the Hon'ble Chief Justice in **Municipal Corporation of the City of Ahmedabad v. Chandulal Shamaldas Patel**, (1970) 1 SCWR 183, relied on a few English Authorities including:

"**Hampton v. Holman**, (1977) 5 Ch D 183 (Jessel

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

M.R) Miles v. Jarvis, (1883) 24 Ch D 633,
(Kay, J and Young v. Bristol Aeroplane
Co.Ltd., (1944) KB 718".

Further the Chief Justice quoted with high regard and approval the view of the great constitutional visionary Sri.H.M Seervai, as under:

"Even though it is perhaps unconventional to quote a living authority, it deserves recalling that Mr.Seervai in his latest edition of his authoritative work in the Constitutional Law of India has opined as follows:- ****But judgments of the Supreme Court, which cannot stand together, present a serious problem to the high Courts and to subordinate Courts. It is submitted that in such circumstances the correct thing is to follow the judgment which appears to the Court to state the law accurately or more accurately than the other conflicting judgments."

This position was summarized in **Amar Singh Yadav v. Shanti Devi (AIR 1987 Patna 191 (F.B.))**, where the Hon'ble High Court of Patna held that:

"that where there is a direct conflict between two decisions of the Apex Court rendered by Benches of equal strength, the High Court must follow that judgment which appears to it to state the law more elaborately and accurately. The said observations are to be found in para 24 of the judgment at page 201."

Since the judgment of a Court deals with and arises at a judgment based on its ratio decidendi, what is apparent from the above analysis of respective precedents is that when two ratios of respective

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

precedents is that when two ratios are available including those of equal strength of superior Courts, the merits of the ratios alone should be the criterion for opting for one or the other and not in terms of their chronology. At the same time, this Tribunal is also guided by the directions contained in the orders of the Full Bench in **Dr.A.K.Dawar (supra)**.

23. Having covered fundamental issues that guide this bench of the Tribunal, neither parties have brought to attention any judgment of the jurisdictional Hon'ble High Court of Bombay that may have binding effect on the decision of this Tribunal in this case. The only order in this jurisdiction that has been made available to us is the order of this Bench in the **National Union of Postal Employees v. Union of India and Ors.**, decided on 18.11.2016 and submitted with the verification of the respondent department and on which there is no record in this bench of any appeal filed before the Hon'ble High Court. Therefore, this order has acquired finality. However, this order has not been referred by any of the later decisions of the coordinate Benches including the coordinate bench at Ahmedabad which has been relied on considerably by the applicant. Having said that and keeping aside these

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

orders for later consideration, in the present order, we now proceed to examine the decisions of various High Court that are apparently conflicting in terms of their decision in regard to nearly identically placed persons or at least, in terms of legal principles involved. We also note that in both the decisions on SLP filed in **D.Sivakumar and Anr** (supra) decided by the Hon'ble High Court of Madras and in **Surendra Peepliwal** (supra), decided by the Hon'ble High Court of Rajasthan at Jodhpur, the Hon'ble Apex Court had dismissed the SLP, but kept the question of law open. On this aspect of whether the rejection of the SLP would amount to rejection of the merits of the case, the coordinate bench of this Tribunal at Ahmedabad considered that despite the fact that the Hon'ble Apex Court had held that the question of law was kept open and despite the further fact that the RRs had not been placed before the Hon'ble High Courts of Rajasthan at Jodhpur and Jaipur, they were compelled to follow the ratio decidendi set by the High Court in conformity with the rules of judicial propriety. As extracted earlier in these orders, they held the view that it was not within the domain of the Bench to take a contrary view and it would be a futile exercise to go

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

into the import of the rules and therefore, they were accepting the law as laid down by some of the Hon'ble High Courts and coordinate benches of the Tribunal. To reiterate however, this bench in its orders dt. 17.9.2019 did not take account of the preceding decision of the Bombay Bench in **O.A. No.509/2012** dt. 18.11.2016 which took a different view and disallowed the OAs treating the elevations as promotions and not as direct recruitment. On the other hand to this argument on judicial propriety, the learned High Court of Karnataka in the case of **The Union of India and Ors. v. Smt.R.K.Kulkarni (supra)**, discussed the doctrine of merger as elicited in **Kunhayammad & Ors. (supra)**, and discussed with reference to extracts reproduced in previous paragraphs of these orders. It also took note of the fact that the Bangalore Bench in **OA No.1259/2014** of **Sri.Krishnaiah** had considered the judgment of Hon'ble High Court of Rajasthan at Jodhpur in **Bhanwar Lal Regar(supra)** and where the coordinate Bench had noted that the relevant rules had not been brought to the notice of the Hon'ble High Court of Rajasthan and had that been done, the decision would have been otherwise. The Court also noted that the previous decisions of the same Court in Hon'ble High

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

Court of Karnataka Kalaburagi Bench in the case of **The Union of India and Ors. v. Shri Basanna Nayak (supra)** had relied on **Bhanwar Lal Regar (supra)** and allowed the OA. However, the Hon'ble Court in its decision now relied on the previous decision of its coordinate bench in **M.G.Shivalingappa (supra)** and held against the employee (respondent). The relevant aspect to be noted in the present context is that the Hon'ble High Court of Karnataka adopted the better ratio between the previous judgments of the same High Court in **Shri Basanna Nayak (supra)** and **M.G.Shivalingappa (supra)** and found the latter to have set out a better ratio.

24. In considering the various judgments relied upon by the learned counsel for applicants, what stands out are that the judgments in **Bhanwar Lal Regar, Har Govind Sharma and Jagdish Prasad Sharma (supra)** have been recalled. No decisions of the Hon'ble High Court are now available for reference.

25. With regard to the decision of the Hon'ble High Court of Rajasthan at Jodhpur in **Bhanwar Lal Regar (supra)** we have already reproduced the observation of the Hon'ble Apex Court when it analysed the case of **Y.Najithamol and Anr. (supra)** and went into the

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

details of RRs which it stated was at the heart of the controversy. Even in this controversy, the RRs are at the heart of the matter and when we consider that the Hon'ble High Court did not take into consideration the RRs and instead stated that they were not produced before them for their consideration, the ratio itself becomes unavailable to be adopted. This was also observed by the Hon'ble High Court of Karnataka in **Smt.R.K.Kulkarni (supra)**, had been observed by the Hon'ble High Court of Rajasthan at Jaipur with regard to **Har Govind Sharma (supra)**. One way to decide between ratios adopted in different judgments was the manner followed by our predecessors in this bench in OA No.509/2012 when they simply stated that the respondent's had produced the RRs for consideration of the bench and therefore, the facts and circumstances of the case considered by the bench differed from **Bhanwar Lal Regar (supra)**. However, as we have discussed above, the superior approach would be to note that the Hon'ble High Court of Rajasthan and the coordinate bench at Jodhpur were both placed in the peculiar situation of not having access to the RRs and therefore, their ratios bore no relevance to the case before us.

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

26. As regards the case of **Jagdish Prasad Sharma (supra)**, the OA had been dismissed by the coordinate bench at Jaipur after perusal of the relevant service rules and in the face of the pendency of **Bhanwar Lal Regar (supra)**, before the Hon'ble High Court of Rajasthan at Jodhpur, but after analysing the nature of the service rules and by relying on the decision of the judgment of the Hon'ble Apex Court in **R. Santhakumar Velusamy & Ors. (supra)**, such advancement can only be considered as a promotion. When the matter came up for final hearing before the Hon'ble High Court of Rajasthan at Jaipur, the case of **Bhanwar Lal Regar (supra)**, had been decided by the coordinate bench at Jodhpur and by relying on the decision in **Har Govind Sharma, Bhanwar Lal Regar (supra)** and further, after noting that the RRs had not been produced before the Hon'ble High Court of Jodhpur in **Bhanwar Lal Regar (supra)**, it decided that it would be appropriate to follow the previous judgment of the coordinate bench of the Hon'ble High Court. We have discussed both those cases relied on in previous paragraphs. Further, we also note that the coordinate bench of this Tribunal referred to the service rules, but this was not done by the Hon'ble High Court of

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

Rajasthan at Jaipur. Therefore, it would not be available as a ratio for consideration of this Bench.

27. Learned counsel for the respondents has referred to the decision of the judgment of the Hon'ble High Court of Delhi in **Uttam Singh (supra)**, which was interpreting an RR by reference to a past practice consistently followed by the concerned respondents. The Hon'ble Court followed the judgment of the Hon'ble Apex Court in **N.Suresh Nathan and Anr. (supra)** and held that this dictum of law where the RR has been carelessly framed would apply with even greater vigour where there is an ambiguity in the RR. However, what is clear from this judgment is that it is the RR which has to be carefully examined and considered by the adjudicating Court or Tribunal for the purpose of considering if there is a need to refer to such past practice consistently followed. This judgment also reflects the concern of the Hon'ble Apex Court when it declared in **Y.Najithamol and Anr. (supra)** that the RR is at the heart of the matter. We also note from the orders at para 2 which affirm:

“...Notwithstanding it being settled legal position that appointment on promotion through a Limited Departmental Competitive Examination is not appointment by direct recruitment,....”

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

This aspect of the settled law in the matter is restated in para 13 as:

"13. It is settled law that appointment from a lower post, on the basis of a Limited Departmental Competitive Examination, is appointment by promotion and not appointment by direct recruitment".

However, the judgment does not make any reference to specific citations in support of this aspect which it has held as settled law. What is available to us is that there have been a number of cases decided by this bench and other benches of the Tribunal, as well as, several Courts where LDCE examination conducted by different departments is considered as regular promotion right from the introduction of such a scheme. In fact, promotion in a department is normally through the assigned channels for each posts Promotion made come about by way of merit-cum-seniority based on some screening or through selection process or else, in the case of one or several channels provided to feeder categories as per the RRs, an accelerated means through the LDCE. Where the RR explicitly provides for direct recruitment and a share thereof, such direct recruitment is also a mode of induction. However, that does not make a long held principle and a method of elevation by way of promotion through LDCE and other

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

means into a direct recruitment and these are quite distinct. It is also not the pleadings of the applicants that there is a confusion in the RRs and which provides an avenue for introduction of a past practice nor have the applicants claimed that there is any past practice of this kind in the matter. Further, when we observe from these judgments and the origin of the practice of the LDCE that there is a settled law in this matter as observed by the Hon'ble High Court of Delhi, it would need considerable weighty arguments and support of citations to unsettle a settled position. As a Tribunal in original jurisdiction for judicial review in service matters we are obliged to look into the RRs even at the outset. But, this has not been done by the Bench at Jodhpur, whereas it was done explicitly by the bench which considered the batch of cases in **Ram Karan Kumhar, Surendra Peepliwal, Jagdish Prasad Sharma and Dev Karan Mahala and Ors. (supra)**, led by OA No.321/2011 .

28. The respondents have also referred to the decision of the Hon'ble High Court in **M.V.Akkiniveeranan and Ors. (supra)** which was also based on the RRs. We are also bolstered by the emphasis placed on the RRs by the Hon'ble High Court of Punjab & Haryana High Court

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

which has discussed at length the various cases relied on by this applicant and has referred to the judgments of the Delhi High Court in **Man Singh and Ajay Panday (supra)** with regard to the prior decisions of benches of this Tribunal, we note from the orders of the Ahmedabad Bench in **Natvarbhai S.Makwana (supra)** decided on 17.9.2019 that it relied entirely on **D.Sivakumar and Anr. (supra)** and in consequence, on **Bhanwar Lal Regar (supra)**. The first case relies on the second case and we have discussed their arguments and their lack of reference to the RRs as required by the Hon'ble Apex Court while deciding that there is no ratio available for comparison with the judgments of other High Courts in this regard, which we are now compelled to evaluate by virtue of the fact that the Hon'ble Apex Court has kept the issue open in law. The orders of the Ahmedabad Bench also did not take note of the previous orders of this Bench in OA No.509/2012 decided on 18.11.2016 of the **National Union of Postal Employees (supra)**. Therefore, we would ordinarily have simply adopted the previous decision of this bench of 18.11.2016 as a binding precedent. However, in the face of contending arguments before various High Courts and because such an evaluation of these

OA Nos.573/2014, 190/2018, 171/2017, 184/2017, 185/2017, 263/2017, 265/2017, 266/2017, 296/2017, 297/2017, 450/2017, 495/2017, 375/2015, 515/2015, 676/2015, 671/2014, 672/2014, 673/2014, 674/2014

different judgments were either not brought to the notice of this Bench at that point in time and a relative evaluation was not made to decide on the precedent judgments to follow, this exercise has been followed in the present orders.

29. In conclusion, we hold that the LDCE held by which the applicants received an elevation to the higher post of Postman from Group 'D' are indeed promotions and will be counted for the purpose of inclusion as a financial upgradation while computing ACP benefits and MACP benefit from the date of entry into regular service with the respondent department. The respondents are, accordingly directed to follow the rule accordingly without discrimination.

30. In the aforesaid circumstances, the OAs lack merits and are dismissed without any order as to costs.

(RAVINDER KAUR)
MEMBER (J)

(R. VIJAYKUMAR) 18/2/13
MEMBER (A)

B.

SD/19